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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WENDY LORENA GALICIA RAMIREZ,)
Individually and as Successor in Interest)
(Decedent's wife) *and* KEVIN JOSUE)
GALICIA RAMIREZ, Individually and as)
Successor in Interest (Decedent's Son),)

Plaintiffs,)

vs.)

CITY OF TUSTIN, ESTELLA SILVA, an)
individual, and DOES 1-10, Inclusive,)

Defendants,)

Case No. 8:22-cv-01619

COMPLAINT FOR DAMAGES

1. 14th Amendment—Substantive Due Process Violation 42 U.S.C. § 1983 (Interference to familial relationship)
2. 4th- Amendment. 42 U.S.C. § 1983 (Excessive Use of Force)
3. 4th Amendment 42 U.S.C. § 1983 (Denial of medical care with deliberate indifference to a serious medical need)
4. Municipal Liability by Ratification 42 U.S.C. § 1983 (*Monell*).
5. Municipal Liability-Failure to train and/ or to supervise. (*Monell*) 42 U.S.C. § 1983
6. Municipal Liability-Unconstitutional Custom, Practice, or Policy 42 U.S.C. 1983 (*Monell*)
7. Negligence -Wrongful Death Under CA Law & Gov. Code §815.2
8. Violation of CA Civil Code § 52.1 (*The Tom Bane Civil Rights Act*)
9. Battery under California Law

[DEMAND FOR JURY TRIAL]

COMPLAINT FOR DAMAGES

“Plaintiffs” **WENDY LORENA GALICIA RAMIREZ**, Individually as the legal wife and therefore as Successor in Interest to the Decedent LUIS MANUEL GARCIA AREAS; *And* **KEVIN JOSUE GALICIA RAMIREZ**, Individually as Decedent’s son, and therefore as Successor in Interest to the Decedent, collectively referred here as “**Plaintiffs**”, bring this Complaint for violation of Civil Rights, and for wrongful Death against the Defendants; **City of Tustin (“CITY”); ESTELLA SILVA an individual; “SILVA”** and against DOES 1 through 10 inclusive. Plaintiffs hereby respectfully allege as follows.

I. JURISDICTION AND VENUE

1. This civil action is based upon violations to constitutional rights protected under 42 U.S.C. § 1983, 1985, 1986, & 1988, and for violations to the Fourth & Fourteenth Amendments of the United States Constitution. Therefore, Jurisdiction is based under 28 U.S.C. § 1331, 1343, (a) (3) – (4) & 1367.
2. This US District Court has supplemental jurisdiction over the Plaintiff’s State claims pursuant to 28 U.S.C. § 1367 (a). Those claims are intrinsically related to the federal claims, and therefore they are considered to be arising out of the same case and controversy under Article III of the US Constitution.
3. Venue in this District Court is proper under 28 U.S.C. § 1391(b), because the DEFENDANTS reside in this Judicial District. And because all the incidents giving rise to this matter occurred within the geographical area covered by this District.
4. The amounts in controversy exceed the minimum jurisdictional limits.

II. THE PARTIES

5. At all times relevant to this action, the Decedent **LUIS MANUEL GARCIA AREAS** (hereinafter referred to as “GARCIA AREAS” “GARCIA” or “DECEDENT”) was a resident of Tustin California. He was 38 years old at the time of his Death. (August 9, 2021)
6. Plaintiff **WENDY LORENA GALICIA RAMIREZ** (hereinafter referred as “MRS. GALICIA or PLAINTIFF”) is the legal wife of the Decedent. (Date of Marriage November 24, 2000). Thus, Plaintiff brings this action pursuant California Code of Civil Procedure §377.60. A Declaration under CCP § 377.32 is attached here as **EXHIBIT No. 1** Plaintiff “Mrs. Galicia” brings this action both in her individual capacity for Wrongful Death Damages and the loss of her husband, and in her representative capacity as Decedent’s successor in interest. CCP § 377.34 (b)
7. Plaintiff **KEVIN JOSUE GALICIA RAMIREZ**, hereinafter referred to as “KEVIN” OR “PLAINTIFF”) is an Adult Son of the Decedent. (A child born within marriage, DOB 04/01/2001).¹ Pursuant California Civil Procedure Code §377.60, PLAINTIFF – KEVIN sues both in his individual capacity for Wrongful Death Damages as result of the Death of his father, and in his representative capacity as Decedent’s successor in interest. A Declaration under CCP 377.32 is also here attached as **EXHIBIT No. 2** CCP § 377.34 (b)
8. The Plaintiffs act in their own individual capacity and as *successors in interest* to Decedent’s Civil Rights per 42 U.S.C. § 1983. Further, the Plaintiffs seek wrongful death damages, including survival damages as to Mr. Garcia Areas’ pain and suffering prior to his death. And for any and all other applicable damages including those provided by Ca. Civ. Proc. § 377.34 (b). (*This Action is being filed after January 1st 2022*)

¹ CA Fam Law “**Conclusive Presumption**” Subject to 7541 (Genetic Test showing otherwise), the child of spouses who cohabitated at the time of conception and birth is “**conclusively**” presumed to be a child of the marriage. (Fam Code 7540 (a) See *County of Los Angeles v. Christopher W.* (2019) 41 Ca.5th 827 Michael H v. Gerald D. (1989) 491 US 110. -Upholding presumption’s facial Constitutionality.

- 1 9. At all relevant times, The Defendant CITY OF TUSTIN (“CITY”) was a municipal
2 corporation existing under the laws of the State of California. “CITY” is a chartered
3 subdivision of the State of California, with the capacity to be sued pursuant to 42
4 U.S.C § 1983. See *Monell v. Dpt. Of Social Services* (1978) 436 US. 658, 691.
- 5 10. At all relevant times, **THE CITY** was responsible for assuring that the actions,
6 omissions, policies, procedures, practices, training, supervision, monitoring, and
7 customs of their TUSTIN POLICE DEPARTMENT - “TPD” and its employees,
8 was in compliance with the laws of the United States and with laws of California.
- 9 11. At all relevant times, the Defendant **ESTELLA SILVA**, (“SILVA”) was an
10 individual working as a **Police officer for Tustin Police Department**. Defendant
11 “SILVA” was acting under color of law and within the course and scope of her
12 employment for TPD- The City. At all relevant times Defendant SILVA was acting
13 within the complete authority, supervision, and ratification of her principal
14 employer entity “THE CITY”.
- 15 12. Plaintiffs reasonably believe and therefore here allege that at all relevant times;
16 DOES 1-10 were individuals residents of California. Some of those
17 DEFENDANTS, DOES 1-10, are duly sworn police officers specifically
18 authorized by the CITY to perform duties and responsibilities as sworn law
19 enforcement officers for the CITY. All of their acts were performed within the
20 course and scope of their employment, acting under the color of law, as Police
21 Officers for the CITY OF TUSTIN POLICE DEPARTMENT. DOE
22 DEFENDANTS 1-10 were acting with the complete authority and ratification of
23 their principal, CITY. The true names and capacities of those Defendants DOES
24 1-10, are unknown at this time to the PLAINTIFFS. Therefore, they are referred
25 to in this complaint as DOE DEFENDANTS 1-10 Inclusive. PLAINTIFFS will
26 seek leave to amend their complaint to show the true names and capacity of those
27 DEFENDANTS when they are ascertained. Each of the fictitiously named
28 DEFENDANTS is responsible in some manner for the wrongful acts alleged
herein that resulted in the Death of Mr. Garcia.

1 13. The Plaintiffs timely filed Governmental Claims pursuant to CA Gov. Code on
2 02/08/2022. Those claims were rejected on 03/02/2022. Thus, Plaintiffs now seek
3 duly judicial adjudication of this matter pursuant 42 U.S.C. § 1983 & CA Laws.
4

5 **III. FACTS COMMON TO ALL CLAIMS FOR RELIEF**
6

7 14. The Plaintiffs incorporate by reference here paragraphs 1 to 13 of this complaint,
8 with the same legal effect as if they were fully alleged herein.

9 15. The relevant incident occurred on **August 9, 2021**, around 10:00 a.m. at 15400
10 Williams Ave., in the City of Tustin, CA. (Near a mobile home's residential location)

11 16. On that day; (August 9 2021) and during some time (s) prior to such date, Mr. Luis
12 Manuel Garcia Areas, was a man suffering from some medical & mental conditions.
13 These conditions sometimes caused him to be homeless, and to be struggling to
14 make a living by collecting recyclable materials on the streets.

15 17. During the morning of August 9 2021, The Tustin Police Department
16 Communication's Unit - "Dispatch", received a phone call for service. The call was
17 regarding an individual that was apparently seen in the area, holding a knife, "**on**
18 **the previous day**". The caller described such individual with "blond hair" and
19 other physical characteristics that did not match the characteristics of the Decedent.

20 18. Defendant Police Officer **ESTELLA SILVA** and other Tustin Police officers
21 responded to the scene. Upon arrival, the Defendant SILVA interacted verbally
22 with the Decedent. Defendant Officer SILVA told Mr. Garcia to "*wake up*". Then
23 she told him "*I know you*". She wanted Mr. Garcia to get out of the bushes. The
24 Decedent responded calmly to officer Silva, indicating to her among other things
25 the following; "*Ok let me get out*" "*I am just picking up some recyclables*".

26 19. Then, when the decedent was trying to get out of the bushes, he was carrying a stick
27 in his hand - which he used to collect the recyclable cans. He also had a plastic bag
28 for the recycled cans in the other hand. At the same time that Mr. Garcia was trying
to get out of the bushes - as he was being ordered by the police officers- an

1 unknown Doe Tustin Police Officer, without giving any warning, nor giving any
2 verbal commands to Mr. Garcia, decided to fire his Taser against him.

3 20. Moreover, while the Taser was being deployed upon Mr. Garcia's body - and again
4 without any warnings nor with any justification- the DEFENDANT ESTELLA
5 SILVA, decided to use deadly force by shooting her firearm against Mr. Garcia. Mr.
6 Garcia died on the same day at a hospital, despite the efforts by the Doctors and
7 nurses that tried to save his life.

8 21. Mr. LUIS MANUEL GARCIA AREAS never threatened the Defendant SILVA.
9 Nor did he ever threat any of the other officers who responded to the scene. Mr.
10 Garcia did not pose a threat - let alone an immediate threat- for serious bodily
11 injury. Nor did he cause any harm to anyone. He simply did not do anything against
12 anyone that could be objectively interpreted as a threat justifying deadly force.

13 22. There was no proper nor effective communication among the officers responding
14 to the scene. There was no De Escalation attempt by Defendant Silva or any of the
15 other responding Tustin Police Officers.

16 23. There were no verbal warnings ever given to Mr. Garcia about the imminent use of
17 the TASER device.

18 24. And moreover, there was no warning ever made that deadly force was going to be
19 used against him.

20 25. Defendant SILVA, and other Officers responding to the scene had other available
21 less lethal options, which could be a more reasonable level of force available (if use
22 of force was even needed given the circumstances). Defendant SILVA nevertheless
23 decided to use her gun and kill Mr. GARCIA. An unarmed man, who was merely
24 collecting recyclables, was likely suffering from mental conditions, who lived in the
25 streets, and to whom the Defendant Silva apparently already knew. Defendant
26 Silva's conduct and use of force was objectively unreasonable and excessive.

27 26. DEFENDANTS SILVA and DOES 1-10's, excessive, unconstitutional, and
28 Negligent use of force was the cause of Mr. Garcia's Death.

1 27. The use of force here was objectively unreasonable. As body cam videos released
2 by TPD show, the shooting of Mr. Garcia Areas was conspicuously excessive under
3 the circumstances at hand. Particularly because the DEFENDANT SILVA, by her
4 own statements already knew the DECEDENT. Therefore, she was aware – or at
5 least she had reasons to be aware – that Mr. Garcia was not a threatening person.

6 28. The Defendant Silva and her fellow responding officers knew that Mr. Garcia had
7 not committed any crime. He had not been violent to anyone and he did not even
8 correspond to the descriptions that they had received about an individual with
9 “blond hair” seen in the area **the day before**.

10 29. Thus, Plaintiffs allege that the involved Tustin Police Officers, including and not
11 limited to Defendant ESTELLA SILVA, used excessive force against Mr.
12 GARCIA, in deprivation of his Constitutional rights causing his wrongful death.

13 30. The Plaintiffs further allege that Defendant SILVA and Does Tustin Police Officers
14 1-10 negligently handled the situation involving a citizen with mental conditions.
15 Such conditions required them to follow specific procedures for situations related
16 to homeless individuals, who may be suffering from mental conditions. They utterly
17 failed to act in an objectively reasonable manner causing the wrongful death of a
18 harmless individual, Mr. Luis Manuel Garcia Areas.

19 31. The Negligent handling of this situation was the proximate legal cause of Mr.
20 Garcia’s Death. As result Mr. Garcia and Plaintiffs have suffered damages.

21 32. The Plaintiffs act in their own individual capacity and as *successors in interest* to
22 Decedent’s Civil Rights per 42 U.S.C. § 1983. Therefore, the Plaintiffs seek
23 wrongful death damages, including survival damages as to Mr. Garcia’s pain and
24 suffering prior to his death. And for any and all other applicable damages including
25 those provided by Ca. Civ. Proc. § 377.34 (b). (*This Action is being filed after January*
26 *1st 2022*)
27
28

FIRST CLAIM FOR RELIEF

Substantive Due Process- Interference with familial relationship
(Violation to the Fourteenth Amendment – 42 U.S.C. § 1983)
Against Defendants; Estella Silva; and DOES 1 to 10)

33. The Plaintiffs here incorporate by reference each and every allegation in the previous paragraphs 1 - 32 with the same force and legal effect as if included here.

34. Plaintiffs had a cognizable interest under the Due Process Clause by the Fourteenth Amendment of the United States Constitution. A cognizable interest to be free from State actions that unlawfully interfere with their familial relationship with their husband and father - respectively.

35. By the foregoing described events of unreasonable and excessive use of force, the Defendant [s] caused an unnecessary Death. And in so doing, they have unlawfully interfered with the familial relationship between the Plaintiffs and their now dead husband and father respectively.

36. The actions of the Defendant **Officer Silva** and **DEFENDANTS DOES 1-10**, resulting in the unjustified shooting of the DECEDENT given the circumstances “shocks the conscience”. This, because the defendants have acted with **deliberate indifference** to constitutional rights and reverence for human life. First, this incident was not an emergency. The call was generated for the police officers to simply show up and to investigate further. This was not a split of a second event. There was not even a crime reported, (let alone a serious crime involved). Thus, the Defendant SILVA and Doe officers had sufficient time & opportunity to **deliberate** as what was the tactical plan they could use to handle the situation safely.

37. Furthermore, Defendant SILVA knew Mr. Garcia Areas, and therefore she knew that he could have been suffering from a mental illness or condition at the time of the Incident. Defendant SILVA and his Does partners, had the time and opportunity to *de-escalate the situation*. They obviously failed to do so. Instead, Defendant Silva shoot an innocent homeless man that she already knew.

1 38. Mr. Garcia was a harmless non violent homeless person. A medically vulnerable
2 person. The shooting as occurred here shocks the conscience and therefore the
3 Defendants should be liable under 42 U.S.C. § 1983 under the **deliberate**
4 **indifference standard**.

5 39. Moreover, Defendants SILVA and DOES 1-10 had sufficient time and opportunity
6 to call for back up, including time to call for personnel who could provide assistance
7 in dealing with individuals with metal disturbance. They didn't.

8 40. As the evidence shows, Mr. Garcia was trying to comply and to get out of the
9 bushes voluntarily as he was being ordered by the Defendants. Thus, there is no
10 reasonable explanation why the Defendants Silva and Does 1-10 did not allow him
11 to get out of the bushes, and instead they pushed his head down physically blocking
12 him from exiting from such bushes' area. This conduct also shocks the conscience
13 under the *Deliberate indifference standard*. The Defendants had the opportunity to;
14 think, to assess, to engage, to de-escalate and to act reasonably to prevent harm to
15 Mr. Garcia or anyone. They simply chose not to do so. When Decedent was able
16 to finally get out of the bushes as he was being ordered, the Defendants DOES 1-
17 10 did not give Mr. GARCIA an opportunity to cooperate with the instructions by
18 the police officers. First Defendant (s) DOE 1-10 shot Mr. Garcia with a Taser
19 without prior warning. And just moments after, Defendant SILVA shot Mr. Garcia
20 with her Gun for no reason when he was moving away from her.

21 41. The conduct of Defendant SILVA and DOES 1-10 is the proximate legal cause of
22 the Death of Mr. Garcia.

23 42. As a direct and legal result of Defendant's conduct as described above; (by way of
24 use of excessive force, and deliberate indifference to serious injury or death),
25 Plaintiffs have been deprived of their right to a family relationship with their
26 husband and father in a manner that shocks the conscience.

27 43. THE DEFENDANTS acted and or failed to act reasonably and with **deliberate**
28 **indifference** to the clear risk of Mr. Garcia's death. They knew their
unconstitutional acts and or omissions would cause irreparable harm and death.

1 They had **sufficient time to deliberate** and chose the path of their actions
2 deliberately.

3 44. Plaintiffs bring this claim in their individual capacities and for their own rights under
4 the 14th Amendment and seek general damages and attorney fees pursuant 42 U.S.C.
5 1988 (b).

6 45. Plaintiffs bring this claim with right of survival damages as to Mr. Garcia's rights,
7 including pain, suffering prior to his death, and for any and all other applicable
8 damages including those provided by Ca. Civ. Proc. § 377.34 (b). (This Action is
9 being filed after January 1st 2022)

10 46. The conduct of Defendant ESTELLA SILVA, in particular was willful, wanton,
11 maliciously done with deliberate disregard for the rights and the human life of the
12 DECEDENT. With the specific intent to cause pain, serious harm, and death.
13 Therefore, the circumstances here justify the finding that in the interest of justice,
14 The Defendant Silva should be personally liable for PUNITIVE damages.

15 **SECOND CLAIM FOR RELIEF**

16 Unreasonable Search and Seizure—Excessive Use of Force
17 Against; Estella Silva; and DOES 1 to 10
18 (Under the Fourth Amendment—42 U.S.C. § 1983)

19 47. Plaintiffs incorporate by reference each and every allegation as stated above within
20 the paragraphs 1- 46, as if it was fully asserted and alleged herein again.

21 48. The Fourth Amendment to the US Constitution provides a Constitutional right to
22 every person to be free from the use of excessive force by state actors acting under
23 of color of law, and within the scope of their employment. Defendant Estella Silva;
24 and DOES 1 to 10 were acting under color of law and within the scope of their
25 employment as Police Officers of Tustin Police Department for the City of Tustin.

26 49. Thus, under color of law, Defendants SILVA and Does 1-10 wrongfully deprived
27 DECEDENT of his rights to be free from excessive and unreasonable use of force.
28

1 50. The Defendant DOES 1 to 10 engaged in excessive use of force, misconduct, and
2 wrongful acts against Luis Manuel Garcia Areas by way of the use of a TASER
3 device without any warning. Without reasonable justification. Without use of other
4 alternative less intrusive methods for compliance and cooperation by Mr. Garcia.

5 51. The Use of force is only justified to the extent is objectively reasonable, and
6 necessary to exercise an arrest or compliance of an individual. However, here
7 Defendants DOES 1-10 did not assess the situation reasonably. Defendant [s] did
8 not assess the situation regarding whether Mr. Garcia Areas required medical care
9 or mental care due to this medical – mental conditions. They knew about his
10 conditions, and they failed to notify supervisors. They failed to request for
11 reasonable and necessary assistance to handle the situation safely and properly
12 without causing serious injury or death.

13 52. Mr. Garcia never verbally threatened anyone during the incident. Nor did he ever
14 make any assaultive physical movement against any of the responding officers. Mr.
15 Garcia never made a movement nor made a statement expressive of any intent to
16 attack anyone during the incident.

17 53. Thus, the use of TASER device given the totality of the circumstances here, was
18 use of unnecessary and excessive force.

19 54. Furthermore, Defendant SILVA engaged in the most egregious use of excessive
20 force against Mr. Garcia on August 9 2021. On that day, the Defendant Silva knew
21 Mr. Garcia. She knew that he was not a harmful person. She knew that he was
22 simply collecting recyclable materials and that he had not been violent against her,
23 nor against any of her partners who responded to the scene that morning.
24 Defendant SILVA had the time and the opportunity to engage in effective and De
25 Escalation communication with Mr. GARCIA. However, she failed to approach
26 the situation and Mr. Garcia in a proper and reasonable manner to give him the
27 opportunity to cooperate with the police officers about their instructions.

28 55. Defendant SILVA decided to use Deadly force by shooting her firearm at a close
distance against Mr. Garcia. She did so at a moment when he was simply trying to

1 move away from her, and from her partner who was inflicting pain with his taser
2 against Mr. Garcia for no reason given to him.

3 56. At the precise moment of this shooting, no one had been threatened by Mr. Garcia.
4 There was no immediate threat of any physical injury to anyone. Furthermore,
5 Defendant Doe 1-10 was already engaged in the use of this Taser against Mr. Garcia
6 to effectuate the seizure of his body by muscular incapacitation. Therefore, the
7 force used by Defendant SILVA by shooting Mr. Garcia in these circumstances was
8 unnecessary and excessive. It was unreasonable under the totality of the
9 circumstances to shoot a non violent homeless and vulnerable person.

10 57. Mr. Garcia's death was proximately caused by the Defendant's misconduct, and the
11 use of clear excessive force. If Defendant SILVA and Defendants Does 1-10 had
12 not used excessive force on August 9 2021, Mr. Garcia Areas would be alive.

13 58. Before his death, the Decedent sustained extreme pain and suffering. Directly
14 caused by the Defendants' wrongful and unconstitutional conduct in violation to
15 the 4th Amendment of the US Constitution. Therefore, Plaintiffs under the 4th
16 Amendment respectfully seek survival damages for the egregious violations to
17 Decedent's Constitutional Rights by way of survival rights of action.

18 59. Plaintiffs further seek compensation for their own individual rights under Statutory
19 California Law for Wrongful Death Damages.

20 60. Plaintiffs respectfully seek Punitive Damages but ONLY as to Defendant
21 ESTELLA SILVA for her malicious conduct. Defendant SILVA's conduct was
22 with malice because she knew that Mr. Garcia Areas was harmless, she knew him
23 from the past, and she knew that he was an individual that may needed medical care
24 and treatment and not to be shot. Her actions **shock the conscience** and were
25 with **deliberate indifference** for the rights of Mr. Garcia Areas and /or the rights
26 of the citizens of the community that she was sworn to serve and to protect. Thus,
27 the Plaintiffs respectfully seek exemplary damages as to Defendant SILVA, and
28 award of all of reasonable attorney fees as part of the cost of this litigation for this
constitutional rights matter pursuant 42 U.S.C. 1988 (b).

THIRD CLAIM FOR RELIEF

61. Plaintiffs repeat and re-allege each and every foregoing allegation and paragraph with the same force and effect as if fully set forth herein.

1 Instead, they continued to try to execute an arrest of Mr. Garcia while he was in
2 agony sustaining extreme pain and suffering after being shot.

3 67. Moreover, once paramedics were eventually at the scene, Defendants SILVA and
4 DOES 1-10 refused to permit medical care providers the immediate access to
5 provide emergency vital care to Mr. Garcia during crucial time (s) for his emergency.

6 68. As a result of Defendants Deliberate Indifference to the serious need for prompt
7 medical care to Mr. Garcia, he ultimately died.

8 69. If Defendants had summoned for immediate medical care and had allowed the
9 medical care providers to do their job promptly, the life of Mr. Garcia could have
10 been saved. Defendants lack of action was a substantial factor.

11 70. As result of Defendant's misconduct, Mr. Garcia suffered pre-death pain and
12 suffering and died after prolonged agony. Thus, the Defendants are liable for the
13 loss of his life and for the loss of enjoyment of his life.

14 71. Defendants Estella Silva; and DOES 1 to 10 are liable for not summoning medical
15 attention promptly and for not allowing the paramedics to quickly treat Mr. Garcia.
16 As such they have failed to act reasonably under the totality of the circumstances,
17 viewed from the perspective of a reasonable person on the scene, in order to
18 prevent constitutional rights violations.

19 72. The conduct of Defendant deputies was excessive, and unreasonably done with
20 deliberate and reckless disregard for the rights and safety of DECEDENT and has
21 proximately resulted in his wrongful Death.

22 73. The Plaintiffs therefore bring this claim pursuant to the 4th Amendment and seek
23 general damages according to proof at trial.

24 74. The Plaintiffs also seek costs and Attorney Fees pursuant to 42 U.S.C § 1988
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26
27
28

FOURTH CLAIM FOR RELIEF

Municipal Liability – By Ratification

(42 U.S.C. § 1983)

(Against Defendant CITY OF TUSTIN)

75. The Plaintiffs repeat and re-allege each and every allegation from the paragraphs 1-74 with the same force and effect as if fully set forth herein.

76. At all times relevant to this complaint, The Defendants SILVA and Does 1-10 acted under color of law, and within the scope of their employment for Defendant City.

77. The acts of the Defendants have deprived DECEDENT and the Plaintiffs of rights protected under the United States Constitution and under California Law.

78. DEFENDANT CITY, acting by way of its entity representatives at the supervisory level (such as its chief of Police Dpt. Stu Greenberg) among others with control and authority over Defendants SILVA and Does 1-10, have **ratified** and **acquiesced** to the acts of constitutional violations committed against Mr. GARCIA as alleged above. Although the majority of the acts and omissions of the involved Tustin Police Officers involved in the incident were recorded by audio and by video through body camera footage, no disciplinary actions have ever been taken against any Tustin Police Officer involved in this case. No administrative consequences, nor any adverse employment consequences or penalty has been implemented in connection with the unjustifiable death of Mr. Garcia who was simply shoot in day light by a TPD officer and recorded on video body cams.

79. The unlawful acts and omissions of Defendants SILVA and DOES 1-10 against the Decedent, are just part of a pattern of deadly incidents that have occurred in Orange County where Tustin Police Department Officers are involved and engaged in such practice [s] of violation to the US Constitution. Despite the above, neither Defendant CITY nor their TUSTIN POLICE DEPARTMENT has taken any remedial actions, such as re-training or any disciplinary measures concerning the Tustin police officers involved in use of force incidents.

1 80. By reason of the aforementioned acts and omissions, Plaintiffs have suffered loss
 2 of the love, companionship, affection, comfort, care, society, training, guidance,
 3 and support of DECEDENT. The aforementioned acts and omissions also caused
 4 DECEDENT'S pre-death pain and suffering, loss of enjoyment of life, and death.
 5 81. Accordingly, Defendant CITY is liable to Plaintiffs for compensatory damages
 6 under 42 U.S.C. § 1983, for their own indulgent conduct towards unconstitutional
 7 practices, that has now resulted in the wrongful death of Mr. Garcia.
 8 82. Plaintiffs act in their individual capacities and as successors in interest to the
 9 Decedent. Thus, Plaintiffs seek both survival and wrongful death damages.
 10 83. Plaintiffs asks for costs and attorney's fees pursuant 42 U.S.C. 1988.

11 12 **FIFTH CLAIM FOR RELIEF**

13 Failure to Train and or to Supervise "*Monell*"
 14 (42 U.S.C. § 1983)
 15 (Against Defendant CITY OF TUSTIN)

16 84. Plaintiffs repeat and re-allege each and every foregoing allegation and paragraph set
 17 forth above with the same force and effect as if fully set forth herein.
 18 85. The City of Tustin is liable for the deprivation of Luis Manuel Garcia Areas'
 19 Constitutional Rights under *Monell v. Department of Social Services of the City of New*
 20 *York*, 436 U.S. 658 (1978). *Monell v. Department of Social Services'* held that municipal
 21 entities may be held liable for violations to Constitutional rights committed by its
 22 employees if the violations arose from a "Failure to adequately train municipal
 23 employees resulting in the deliberate indifference to the constitutional rights of
 24 citizens". Here, Defendant City of Tustin was aware of the widespread problems
 25 within the City of Tustin Police Department as to the excessive use of force within
 26 the department. Despite their knowledge, the Defendant took no action to
 27 adequately train nor supervise their Officers. Defendant has condoned and
 28 acquiesced to the abusive behavior by refusing to retrain them, to supervise them,

1 to discipline them, and or to correct abusive unconstitutional behavior resulting in
2 serious harm in incidents of use of Force.

3 86. Defendant City of Tustin had prior knowledge that other citizens had been victims
4 of law enforcement abuse by Tustin Police Department Officers, and deliberately
5 have chosen not to provide proper training and supervision to prevent further
6 incidents of excessive use of force. This has resulted in more constitutional
7 violations such as the Death of Plaintiffs' husband and father.

8 87. Among other, the City was aware of the risk involved when its police officers
9 responded to incidents where residents may be in conditions of homelessness and
10 or medical – mental illness. However, despite their knowledge of such risk they
11 failed to provide adequate training to their police officers to handle unusual
12 situations not involving a crime, but involving **mental disturbed or homeless**
13 individuals not representing an imminent threat.

14 88. Defendant CITY failed to properly train City of Tustin Police Officers, such as
15 Officer Silva and DOES 1 through 10, to **de-escalate interactions** with residents
16 or mentally ill individuals, so that Police Officers do not escalate their interactions
17 with residents, or with mentally ill individuals, and do not overreact and resort to
18 use of deadly force when the use of such level of force was not necessary. In this
19 case, Officer Silva and DOES 1-10 escalated their interactions with DECEDENT
20 who was mentally ill and was homeless. Mr. Garcia was harmless and not violent.

21 89. Defendant CITY failed to properly train City of Tustin police officers, such as
22 Officer Silva and DOES 1-10, to not permit fear to reach the point of becoming
23 **unreasonable fear**, and not objectively reasonable, which would result in the use
24 of deadly force by Officer Silva and DOES 1-10 and would cause the death of
25 mentally ill, homeless non violent persons such as DECEDENT.

26 90. Defendant CITY failed to properly train Tustin police officers, such as Officer Silva
27 and DOES 1-10, to properly and **adequately assess** the need to use force against
28 persons such as DECEDENT, who have a mental illness and might not be able to
understand all of the instructions being given by the police officers.

1 91. Defendant CITY failed to properly train its police officers, such as Officer Silva
2 and DOES 1-10, in proper police tactics, such as **situational awareness**, so that
3 police officers, such as Officer Silva and DOES 1-10, do not utilize negligent tactics,
4 which is how Officer Silva and DOES 1-10 acted in this case. Because of the lack
5 of proper training by Defendant CITY, Defendant Silva and DOES 1-10 did not
6 use proper police tactics in the handling of their contact and interactions with Mr.
7 GARCIA. Defendant Silva and DOES 1-10 used **defective police tactics**,
8 including the lack of a **situational awareness**. These training failures by Defendant
9 CITY, and defective tactics by Defendant Silva and DOES 1-10, resulted in the
10 death of DECEDENT.

11 92. Defendant CITY failed to properly train City of Tustin police officers, such as
12 Defendant Silva and DOES 1 through 10, about the importance of **effective**
13 **communication** between officers prior to using any level of force.

14 93. Because of the lack of proper training by CITY of Defendant Silva and DOES 1
15 through 10, they did not use any **effective communication** prior to and during the
16 use of force against Mr. Garcia. The conspicuous ineffective communication by
17 Defendant Silva and DOES 1 through 10, prior to and during the incident, resulted
18 in the death of Mr. Garcia. Causing constitutional violations and Damages both to
19 the Decedent and to his wife and son.

20 94. Defendant City failed to provide adequate training regarding handling of situations
21 involving persons falling within Welfare Inst. Code 5150 & 5158.

22 95. These failures to train and supervise as stated above is so closely related to the
23 deprivation of Decedent's rights, as to being the actual moving force that caused
24 his wrongful death.

25 96. Defendant CITY is liable for compensatory damages under 42 U.S.C. § 1983.
26 PLAINTIFFs bring this Monell claim as DECEDENT's successors-in-interest as
27 defined in Section 377.11 of the CCP., and seek survival damages for the violation
28 of DECEDENT's rights. PLAINTIFFS also seek reasonable attorneys' fees
pursuant to 28 U.S.C. § 1988, costs, and interest.

SIXTH CLAIM FOR RELIEF

Municipal Liability—Unconstitutional Custom or Policy (42 U.S.C. § 1983)
Against Defendant CITY OF TUSTIN

97. Plaintiffs repeat and re-allege each and every foregoing allegation and paragraph set forth above with the same force and effect as if fully set forth herein.

98. The individual Defendants acted under color of law.

99. Upon Plaintiff's information and belief on or about August 9, 2021, and for at least five years prior to this fatal incident, Defendant CITY OF TUSTIN established, maintained, applied and/ or allowed a custom, policy and practices that violate constitutional rights such as the following;

- a) CITY's failure to provide adequate training regarding the use of force, and the use of deadly force. Including incidents of homelessness & mental illness.
- b) The use of excessive force, including excessive deadly force, by CITY officers, when there was no need for such force, and/ or where there was no imminent threat to the officers involved or to others.
- c) A custom, policy, and practice of condoning peace officers code of silence through the TPD. Systemic failure to Report any incidents of use of force by other officers. No TPD reported other officers or intervene to prevent use of excessive force.
- d) Failure to discipline officers who engage in the use of unnecessary unreasonable force resulting in serious injury or death.
- e) Failure to adequately supervise and control officers known or who reasonably should have been known to have used unnecessary and unreasonable force in the past. Such as Defendant SILVA and Does 1-10.
- f) Failure to adequately supervise and control officers known or who reasonably should have been known to have used unnecessarily and excessively their taser guns in incidents where no such use of force was required.

- g) Failure to adequately train, supervise, control and discipline officers known or who reasonably should have been known to have used unnecessarily and dangerously their firearms in incidents where no such use of force was necessary.
- h) Failure to adequately supervise and to train officers in a manner that it was safe and consistent with civil police force standards.
- i) City custom and practice of maintaining a policy of inaction and an attitude of indifference towards the soaring numbers of instances of use excessive force by its Police officers, including the City Deliberate choice of failure to discipline, retrain, investigate, terminate, and recommend officers for criminal prosecution who use excessive force against members of the community.

100. By reason of the aforementioned unconstitutional customs, and practices, and policy, Plaintiffs have suffered the loss of the love, companionship, affection, comfort, care, society, training, guidance, and support of the Decedent. Accordingly, Defendant CITY shall be liable to the Plaintiffs for compensatory damages.

101. PLAINTIFFS bring the instant claim individually and as successors in interest to DECEDENT, and seek also wrongful death damages under this claim. PLAINTIFFS also seek attorney's fees under this claim pursuant to 42 U.S.C. § 1988(b) , and reasonable attorney fees under 42 U.S.C. § 1988.

SEVENTH CLAIM FOR RELIEF

Negligence (Cal. Govt. Code § 820 and 815.2(a) & California Common Law)
(Wrongful Death)
(Against All Defendants)

102. Plaintiffs repeat and re-allege each and every foregoing allegation and paragraph set forth above with the same force and effect as if fully set forth herein.

103. Defendant SILVA, Does 1-10 had a General duty to use reasonable care to prevent harm or injury to others.

1 104. This duty includes acting as objectively reasonable police officers within the
2 circumstances. With appropriate and effective communication, with reasonable
3 and professional tactics, giving appropriate reasonable commands, giving proper
4 and required warnings, not using unnecessary force, using less than lethal options
5 when feasible, and only using deadly force as a last resort. Have reverence for
6 human life. To not Escalate situations from a “no crime investigation” to a fatal
7 shooting of a homeless non violent person for no reason.

8 105. Defendants SILVA , Does 1-10 breached their duty of Care. Their Actions
9 were Negligent and reckless as no reasonable officer in such circumstances would
10 have killed a man that posed no threat and had not been violent to anyone.

11 106. DEFENDANTS CITY, SILVA and DOES 1-10 knew that by acting as
12 sworn officers under color of law, they were charged with ensuring the safety and
13 well-being of everyone. Including the DECEDENT. Defendants Silva, CITY and
14 DOES 1-10 breached their duty to protect and ensure the safety of all persons,
15 including the DECEDENT, by engaging in the following negligent conduct;

- 16 a. The Negligent use of unreasonable excessive and lethal force against
17 GARCIA AREAS, causing ultimately his death. Including but not limited to
18 the use of taser and Officer SILVA’s gun without necessity.
- 19 b. The negligent handling of the situation with respect to the DECEDENT,
20 including, but not limited to, negligent assessment of the situation. Negligent
21 assessment of the need to use force. The negligent action of firing a firearm
22 without first making attempts to de-escalate the situation, without making an
23 assessment as to other alternative use of force level options. Such as less or
24 non lethal devices. i.e Baton, pepper spray, body restrain techniques, verbal
25 commands, etc.
- 26 c. The negligent failure to render and or to allow others to render timely
27 medical aid to the decedent when he was in extreme need of medical care
28 due to a serious medical emergency.

d. The negligent failure to allow the paramedics to provide timely medical emergency care to the Decedent. Negligent communication during incident.

e. The negligent training and failure to ensure that adequate numbers of police department employees with appropriate education and training were available to meet the needs of and protect the rights of individuals in such condition as Decedent. (Homeless with mental care needs).

107. As a direct and proximate result of Defendants' negligence, Plaintiffs were deprived of the life-long love, companionship, comfort, support, society, care and support of their husband and father, and will continue to be so deprived for the remainder of their natural life.

108. CITY is vicariously liable for the wrongful acts of its employees pursuant to section 815.2(a) of the California Government Code. Pursuant 815.2 (a) a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

109. Plaintiffs seeks wrongful death damages under this claim. Plaintiffs also seek costs, interest and attorneys' fees under Ca Civil Code §1021.5.

110. Pursuant to the recent modifications to statutory wrongful death laws in California, Plaintiffs seek survival claim damages for the pre death pain and suffering sustained by Mr. Garcia during the whole time (s) relevant prior to his ultimate death. Ca. Civ. Proc. § 377.34 (b). (*This Action is being filed after January 1st 2022*).

EIGHTH CLAIM FOR RELIEF

Violation of Tom Bane Civil Rights Act (Cal. Civil Code §52.1, 52.5, 52.7, 52.9)

Against Defendants SILVA and DOES 1-10

111. Plaintiffs repeat and re-allege each and every foregoing allegation and paragraph set forth above with the same force and effect as if fully set forth herein.

1 112. California Civil Code, Section 52.1 *et al* (the Bane Act), prohibits any person
2 from using violent acts or threatening to commit violent acts in retaliation against
3 another person for exercising that person's constitutional rights.

4 b. If a person or persons, whether or not acting under color of law, interferes
5 by threat, intimidation, or coercion, or attempts to interfere by threat,
6 intimidation, or coercion, with the exercise or enjoyment by any individual
7 or individuals or rights secured by the Constitution or laws of the United
8 States, or of the rights secured by the Constitution or laws of this state, the
9 Attorney General, or any district attorney or city attorney may bring a civil
10 action for injunctive and other appropriate equitable relief in the name of
11 the people of the State of California, in order to protect the peaceable
12 exercise or enjoyment of the right or rights secured.

13 c. Any individual whose exercise or enjoyment of rights secured by the
14 Constitution or laws of the United States, or of rights secured by the
15 Constitution or laws of this state, has been interfered with, or attempted to
16 be interfered with, as described in subdivision (b), may institute and
17 prosecute in their own name and on their own behalf a civil action for
18 damages, including, but not limited to, damages under Section 52,
19 injunctive relief, and other appropriate equitable relief to protect the
20 peaceable exercise or enjoyment of the right or rights secured, including
21 appropriate equitable and declaratory relief to eliminate a pattern or
22 practice of conduct as described in subdivision (b).

23
24 113. California Civil Code, Section 52.1 authorizes a private right of action for
25 damages to any person whose constitutional rights are violated. "a successful claim
26 for excessive force under the Fourth Amendment provides the basis for a successful
27 claim under § 52.1." See *Chaudhry v. City of Long Beach*, 751 F.3d 1096, 1105-06 (9th
28 Cir. 2014); citing *Cameron v. Craig*, 713 F.3d 1012, 1022 (9th Cir. 2013) ("[T]he
elements of the excessive force claim under § 52.1 are the same as under § 1983.");

1 *Bender v. CITY of L.A.*, 217 Cal.App. 4th 968, 976 (2013) (“an unlawful
2 [seizure]...when accompanied by unnecessary, deliberate and excessive force...is
3 within the protection of the Bane Act”).

4 114. Here, Defendants SILVA and Does 1-10 have used objectively unreasonable
5 lethal force against Mr. Garcia in deliberate interference for the exercise or
6 enjoyment of his constitutional rights secured under the United States Constitution,
7 the laws of the United States, Civil liberty rights, rights under the laws of California,
8 and fundamental rights and freedoms as conceived by our judicial system.

9 115. The conduct of Defendant ESTELLA SILVA in particular violated
10 DECEDENT’s Fourth Amendment right to be free from excessive force when
11 they used deadly force against DECEDENT without any warning, and by firing
12 multiple rounds at him and killing him for no reason. Prior to his shooting, there
13 had been no basis to conclude that Mr. Garcia had committed any crime.
14 Defendant Officer Silva and DEFENDANTS DOES 1-10 had no information
15 whatsoever that Mr. Garcia had committed any crime. Upon their arrival and as
16 result of their interactions with Mr. Garcia, Defendant SILVA and DOES 1, could
17 conclude 2 things. 1) that SILVA knew Mr. Garcia and 2) he was not committing a
18 crime. (Collecting recyclables is not a crime). Thus, Defendant SILVA, Does 1-10
19 while acting under color of law, interfered with Mr. Garcia’s constitutional rights,
20 including and not limited to the right to be free of excessive use of force causing
21 his death.

22 116. The conduct of DEFENDANTS was a substantial factor in causing the
23 harm, losses, injuries, and damages of PLAINTIFFS. PLAINTIFFS seek survival
24 damages under this claim in their individual capacity and as a successors-in-interest
25 to DECEDENT. PLAINTIFFS also seek costs and attorney fees under this claim
26 pursuant to Civ. Code, § 52.1(h) and Ca. Civ. Code §1021.5.

27 117. The CITY is under California law and the doctrine of *respondeat superior*, for
28 the acts and omissions of its Officers. In this case for the acts of Defendant Silva
and DOES 1-10.

NINTH CLAIM FOR RELIEF

Battery (Cal. Govt. Code § 820 and California Common Law)
Against Defendant ESTELLA SILVA, CITY OF TUSTIN, and DOES 1-10)

118. Plaintiffs repeat and re-allege each and every foregoing allegation and paragraph set forth above with the same force and effect as if fully set forth herein.

119. Defendants used excessive and unreasonable lethal force against MR. GARCIA AREAS as alleged in detailed above.

120. DEFENDANTS SILVA AND DOES 1-10, while working for the CITY OF TUSTIN, and acting within the course and scope of their employment and duties as police officers, intentionally shot Mr. Garcia. Thereby using unreasonable and excessive physical force, force by taser, and deadly force by firearm against him, Defendants caused Mr. Garcia to suffer from severe pain and suffering, and ultimately death. Officer Silva and DOE DEFENDANTS 1-10 had no legal justification for using deadly force against Mr. Garcia. Their use of force while carrying out their duties as police officers was an unreasonable, unnecessary and non-privileged nor justified.

121. Each of DOE DEFENDANTS 1-10 integrally participated by acting and or by failing to intervene in the use of force during the incident with Mr. Garcia.

122. As a direct and proximate result of Defendants' conduct as alleged above, Plaintiffs have been deprived of the life-long love, companionship, comfort, support, society, care, and support of their husband and father, and they will continue to be so for the remainder of their natural life.

123. Plaintiffs seek wrongful death general damages including survival damages under this claim, as well as costs, interest, and reasonable attorneys' fees under California Civil Code §1021.5.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs' request entry of judgment in their favor and against the
3 Defendants as follows:

- 4
5 A. For compensatory General Damages under Federal Laws in an amount to
6 be proven at trial .
7 B. For Attorney Fees pursuant 42 U.S.C. § 1988.
8 C. For compensatory Wrongful Death Damages under California Laws. In
9 amount [s] to be proven at Trial to be awarded to each of the Plaintiffs.
10 D. For Attorney's fees and costs pursuant to California Civil Code, Section
11 52.1(h).52 (The Bane Act). and California Civil Code §1021.5;
12 E. For Survival Action Damages, (Pre Death Pain and Suffering). Any & all
13 survival damages applicable under CA Code of Civil Procedure § 377.34 (b).
14 (Non-Economic survival damages according to proof at trial)
15 F. For Punitive Damages only as to Defendant ESTELLA SILVA.
16 G. For such other relief as the Court may deem just and proper.

17
18
19 **DEMAND FOR JURY TRIAL**

20
21 Plaintiffs hereby expressly demand a trial by Jury.

22
23 Respectfully Submitted by:

24 

25
26 Date: August 31 2022

27 /s/ Jesus Eduardo Arias Esq., LL.M.
28 Attorney for Plaintiffs